



Cooperative Solutions for the Environment

*The Texas Natural Resource Trustees
restore damaged natural resources*

BY ANNETTE BERKSAN





Natural resources are defined in the Comprehensive Environmental Response and Liability Act (CERCLA) 42 U.S.C. §101(16) and the Federal Oil Pollution Act of 1990 33 U.S.C. §1001(20) as: “land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any state or local government, or Indian tribe.”

Photos courtesy of TEXAS HIGHWAYS

WHEN OIL OR HAZARDOUS SUBSTANCES ARE DISCHARGED INTO THE ENVIRONMENT, fish, wildlife, plants, and other natural resources can be damaged. The Texas Natural Resource Trustees help to restore lost natural resources throughout the state.

Trustees are designated federal or state natural resource management agencies authorized by law to seek compensation to the public for the loss of natural resources. The participating agencies in Texas are the Texas Parks and Wildlife Department (TPWD), the Texas General Land Office (GLO), the Texas Commission on Environmental Quality (TCEQ), the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Department of the Interior, as represented by the U.S. Fish and Wildlife Service and the National Park Service.



Legal Authority

Natural resources are defined in the Comprehensive Environmental Response and Liability Act (CERCLA) [42 U.S.C. §9601(16)] and the Federal Oil Pollution Act of 1990 [33 U.S.C. §2701] as “land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any state or local government, or Indian tribe.”

The Texas Natural Resource Trustees’ authority to seek restoration of natural resources damaged by releases of oil or hazardous substances is derived from the following federal and state statutes and regulations:

- Comprehensive, Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*;
- Federal Oil Pollution Act of 1990, 33 U.S.C. §2701 *et seq.*;
- Federal Water Pollution Control Act, 33 U.S.C. §1321;
- National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, Subpart G;
- Oil Spill Prevention and Response Act of 1991, Texas Natural Resources Code, Chapter 40; and
- The Texas Hazardous Substances Spill Prevention and Control Act, Texas Water Code, §26.265.

The Trustees serve as advisers to responsible parties and response agencies on the natural resource damage assessment lia-



Seventy acres of intertidal salt marsh were created in Lavaca Bay as a result of a cooperative settlement. The new marsh, which is part of the Aransas National Wildlife Refuge, adds to the foraging area of endangered whooping cranes.

Photo courtesy of NOAA



bility associated with different remedial strategies at CERCLA sites. This cooperative relationship: (1) allows the responsible party to evaluate the most cost-effective remedial alternative and (2) provides a measure of certainty on total CERCLA liability. A memorandum of understanding between the Trustee agencies regarding coordination under the Texas Risk Reduction rules has been adopted by rule.

Working Cooperatively to Restore Resources

According to the GLO, the Trustees encourage the responsible party to work cooperatively and jointly with them throughout the pre-assessment, assessment, and restoration phases of each project. This reduces assessment costs and maximizes “restoration acres-on-the-ground.” Settlement agreements or consent decrees formalize the responsible party’s commitment to work with, implement, or fund restoration projects sufficient to compensate for lost natural resource services.

The goal is for all parties to work cooperatively with the Trustees to restore natural resources. “The cases are always challenging and complicated, and we have to negotiate with and please a lot of different people,” says TPWD staff attorney **Raenell Silcox**, who has worked with the program since the agency became a Trustee in 1990. Working cooperatively gets resources restored faster. The public gets made whole faster.”

Silcox adds that working together with the responsible parties can achieve better results than courts might have ordered. “Responsible parties will often do more voluntarily than they would have to do if we went to court,” she says. “They want to see a natural resource project that benefits the environment.”

“The Texas Natural Resource Trustees have perfected the art of working cooperatively with responsible parties to come up

with cost-effective restoration projects that compensate for an injury associated with the release of hazardous materials,” says Richard Seiler, who has headed the program at the TCEQ since 1995.

In 1994, the U.S. Environmental Protection Agency (EPA) designated an area along the eastern shore of Lavaca Bay as a Superfund site. The site included portions of an industrial facility at Point Comfort, as well as a dredge spoil island and nearby areas of the bay. Working cooperatively, the trustees, the EPA, and the responsible party agreed on a variety of restoration projects to compensate for natural resource losses resulting from the site’s contamination, as well as for services lost.

Restoration projects included the creation of 70 acres of intertidal salt marsh within the Aransas National Wildlife Refuge and 11 acres of new oyster reef habitat in Lavaca Bay. In addition, 729 acres of land will be preserved by transferring it to the U.S. Fish and Wildlife Service as part of the refuge. To offset recreational fishing losses, new fishing piers at Six Mile Park, Point Comfort Park, and the bay-front peninsula in Port Lavaca were constructed. An existing auxiliary boat ramp was replaced, docks were built, and an existing jetty was modified to improve access to and enhance recreational fishing opportunities in the bay.

“What we did from a practical standpoint with the Lavaca Bay restoration project is a model for the rest of the nation,” Seiler says.

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TEXAS NATURAL RESOURCE TRUSTEE ACCOMPLISHMENTS

The Texas Natural Resource Trustees have become a national model for the use of cooperative, restoration-based assessments. Since the inception of the program in Texas through 2010, projects valued at an estimated \$34.5 million had been implemented across the state on behalf of the public as a result of settlements for the restoration of damaged natural resources. Restoration projects are selected as near to the affected site as possible and as close in habitat character as practicable.

Trustees recently recovered \$10 million from a settlement with the American Smelting and Refining Company (ASARCO), considered by the EPA to be the largest environmental bankruptcy in U.S. history. With interest to date, this will result in \$11.7 million to be used for Texas coastal restoration projects.

The following are a few of the many successful restoration projects.

Maddin Prairie Preserve, Mitchell County

Restored 350 acres of native prairie.

Clymer Meadows Prairie Preserve, Hunt County

Restored 15 and preserved 100 acres of imperiled tallgrass prairie; created 11 acres of freshwater wetlands.

Big Thicket National Preserve (Jefferson, Hardin, Jasper, and Orange)

Acquired, preserved, and transferred to the National Park Service 645 acres of valuable bottomland hardwood forests.

TPWD Alazan Bayou Wildlife Management Area, Angelina County

Added 486 acres of bottomlands hardwood habitat.

Pasadena, Harris County

Constructed a 35-acre fresh and saltwater marsh along the Houston Ship Channel.

Sheldon Reservoir State Park, Harris County

Added a 100-acre tract of bottomlands hardwood forest along Carpenter's Bayou to Sheldon Reservoir State Park.

San Jacinto Monument State Park, Harris County

Rebuilt 31 acres of the Santa Ana Bayou marsh complex to bring the habitat back to the way it was at the time of the Battle of San Jacinto.

Shamrock Island, Corpus Christi Bay, Nueces County

Acquired and preserved a sensitive 110-acre bird rookery.

Aransas National Wildlife Refuge, Calhoun County

Constructed 70 acres of intertidal salt marsh within and adjacent to the refuge; 729 acres of wetlands, coastal prairie, and shrub lands will be preserved.

J.D. Murphree Wildlife Management Area, Jefferson County

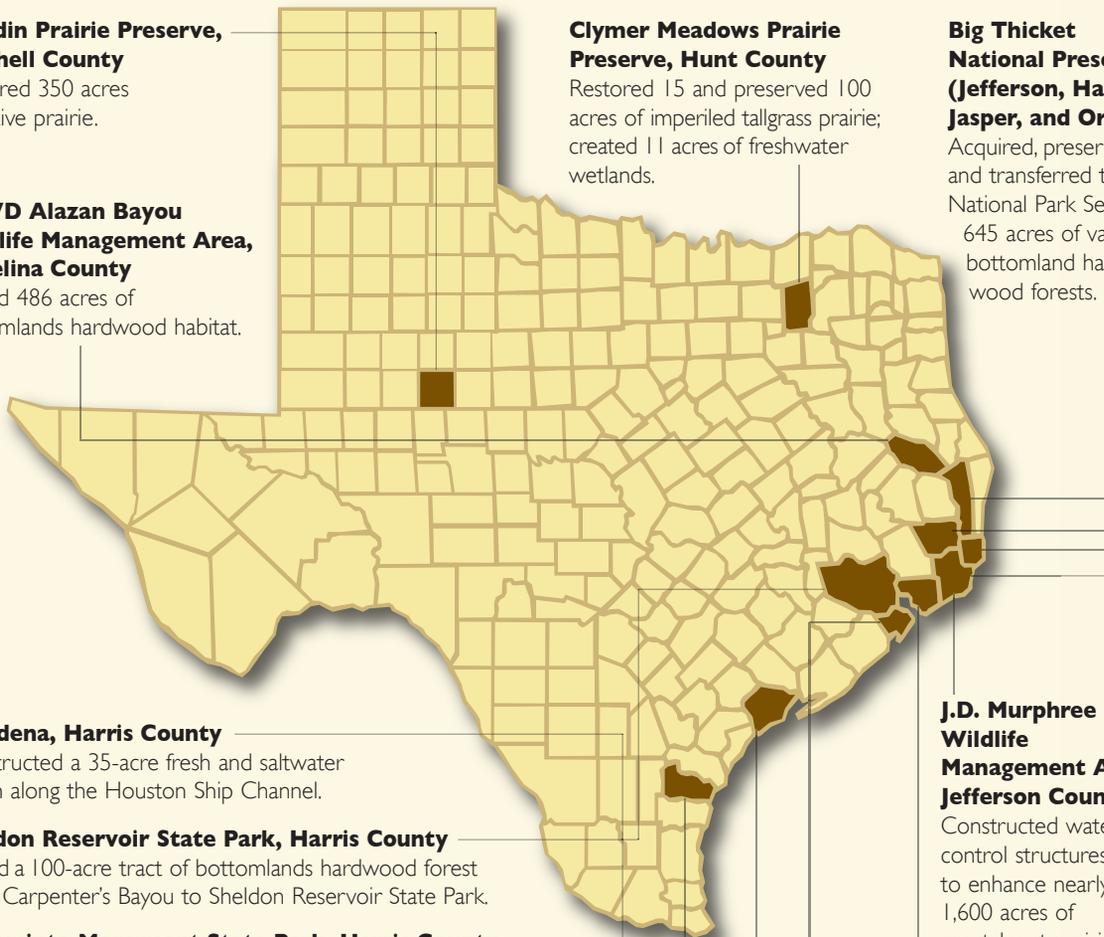
Constructed water-control structures to enhance nearly 1,600 acres of coastal wet prairie.

Anahuac National Wildlife Refuge, Chambers County

Constructed a water-control structure to protect and restore marshes.

Galveston Island State Park, Galveston, Galveston County

Rebuilt 115 acres of estuarine marsh.



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